D.B. CIVIL WRIT PETITION NO. 667/2006

Dr. A.K. Doshi

Vs.

Union of India & Ors.

DATE OF ORDER :: 10.5.2007

HON'BLE MR JUSTICE RAJESH BALIA
HON'BLE MR JUSTICE BHANWAROO KHAN

Mr. A.K. Bhandari, Senior Advocate assisted by
Mr. Gajendra Sharma, for the petitioner.
Mr. Girish Joshi, for the respondents.

Heard learned counsel for the parties.

The case has some checkered history. The petitioner was fist appointed in the Central Company Service on 1.10.1974 on the post of Deputy Director (Inspection). He retired from service on attaining the age of superannuation on 31.12.1997.

After the petitioner had retired from service on superannuation from the post of Director of Inspection and Investigations, Department of Company Affairs, the petitioner was selected as a post retiral employee as the Member (Technical) Company Law Board on 22.5.1998 and the services of Member (Technical) Company Law Board were brought to an end on 20.12.1999. The background of this was that the appointment of the petitioner as a Member (Technical) Company Law Board

was challenged by one Shri S.B. Mathur. The matter was ultimately decided by the Hon'ble Supreme Court. The Hon'ble Supreme Court had upheld the contention of the challenge by finding that the petitioner has been appointed from amongst reserved penal and not from the main penal. Therefore, as per order of the Hon'ble Supreme Court appointment of the petitioner had came to an end on 20.12.1999. The Hon'ble Supreme Court had left the Company Law Board free to reconsider the matter and make a fresh appointment on the Board as a Member (Technical). The matter of fresh appointment was kept pended until it was decided not to appoint any Member. While this process was going on, certain claims came to be raised by the petitioner, out of which some were to entitlement as a result of superannuation on 31.12.1997 and some claims related to the period during which he continued as a Member of Company Law Board and subsequent to that.

Such claims having not been solved the petitioner had approached the Central Administrative Tribunal vide O.A. No. 97/2002. Summary of the claim raised before the Tribunal is reproduced as under :-

> "(a)- Reimbursement of Airfare from Delhi to Chennai of May 1998 by Indian Air Lines amounting to Rs.6955/- as also a lump sum grant of Rs.19,400/-.
>
> (b)- Payment of brining his luggage from Delhi to Chennai sometime in August 1999.

(c)- Reimbursement of Airfare from Chennai to Delhi of 8th October 1999 by Indian Airlines amounting to Rs.7,720/-.

(d)- Reimbursement of Airfare from Delhi to Chennai of October 24th 1999 by Airlines amounting to Rs.7,720/-.

(e)- Reimbursement of Taxi fare from Delhi Airport to NOIDA of 8th October 1999 amounting to Rs.350.

(f)- Reimbursement of Taxi fare from NOIDA to Delhi Airport of 24th October 1999 amounting to Rs.300/-.

(g)- Payment of G.P.F. Amount.

(h)- Payment of Leave Encashment amount for which orders were apparently passed on 4th December 2001.

(i)- Payment of T.A. Bill amounting to Rs.24,093 (as post retirement benefit) for which a claim was submitted on 3rd November 2001.

(j)- Though the applicant was relieved on 19th December 1999, he kept on hoping to be reappointed till 31st July 2001 (in view of the orders of the Hon'ble Supreme Court dated 2nd March 2001 in Civil Appeal No.1692/2001 etc) when a decision was taken by the Government of India that no one should be appointed to the Board. The applicant has claimed salary and allowances for this period.

(k)- Interest on all the aforesaid amounts till payment."

As per order of the Tribunal made on 18.10.2005, claim No. (b) to (f) were accepted and all other claims were rejected. In respect of claim No. (b) to (f) the petitioner was left free to submit fresh claim of left out amount as may be permissible under the Rules.

The order of the Tribunal is challenged in this writ petition and the claims which are subject matter of this writ petition in this regard are as under :-

"SUMMARY OF THE CLAIMS OF THE PETITIONER DR. A.K. DOSHI

The Applicant unlawfully deprived of the following monetary benefits :

1. Airfare

Delhi to Chennai on joining on 29.5.98 on transfer (Rs.6957/- Fare + Rs.19400/- as lump sum grant) (Rejoinder Page No. 91 to 93)	26,357.00
Addition of 4 days' salary and consequently addition of 12 days' earned leave as no joining time was availed. 4 days salary amount to be decided by the Department.	
Interest	
Interest @ 10% p.a. From 01.6.98 to 31.9.2005	21,432.00
Total	46,780.00

2. Air fare as mentioned in Page No. 93(b), Para 6 (b) read with Page No. 3 Para No. 4.7 of O.A. No.97 (The para No. 93(a) has been given to only know that after transfer to Madras and joined on 29.5.98, Applicant was transferred to Delhi and for which payments have been made to & fro.	
This T.A. Bill of Rs.16,090/- is on account of Air fare from Chennai to Delhi and Delhi to Chennai. The details have been mentioned at page 3 of O.A. under Para 4(7). In Para 4(7) first two lines have been mentioned that after joining Chennai he was transferred to Delhi on 02.09.98 and again after few months transferred to Chennai and the matter is regarding <u>again</u> transfer (rejoinder Page No.93 Para 6(b)]	16,090.00

2. Air fare as mentioned in Page No. 93(b), Para 6 (b) read with Page No. 3 Para No. 4.7 of O.A. No.97 (The para No. 93(a) has been given to only know that after transfer to Madras and joined on 29.5.98, Applicant was transferred to Delhi and for which payments have been made to & fro.	
Interest from Ist Nov.1999 to 31.9.2005	11,210.00
	27,300.00

3. Contributory Provident Fund

Applicant contribution Rs.196147/- + Govt. Contribution Rs.46,414/- = Rs.2,42,561.00 In this amount, the interest provided upto 31.3.2001. (Rejoinder Page No. 94 to 98)	2,42,561.00 (Received on 28.4.2003)
Interest for further two years i.e. upto 31.3.2003 @ 10% p.a.	
Interest on interest from 1.4.2003 to 31.9.2005	50,937.00
	13,563.00
	64,500.00

4. Leave encashment for 45 days (Page No. 102 to 103) (Interest from 1.12.2001 to 31.3.2001 @ 10%)	55,632.00 20,265.00
	75,897.00
Less : Paid Rs.38,871/-	38,871.00
Balance due to the Applicant.	37,026.00

5. Retirement T.A. Bill (Page No.102 to 103)	24,093.00 (Received on 28.4.2003)
Interest from 1.12.2001 to 31.3.2003 @ 10% p.a.	4,169.00

6. Arrears of Salary & Allowance of Member. Salary from 1.1.2000 to 4.12.2001 including interest (subject to calculations) (Page No. 101 of Rejoinder)	7,00,000.00

7. Deduction of excess salary and license fee is not proper. (Page No.101 of Rejoinder)	8,960.00 (Deducted out of Leave Encashment, which is not proper.)
Total outstanding claim.	Rs.8,89,744.00

At the out set, we may notice that so far as Item No.2 is concerned, the Tribunal has allowed the claim on submission of detailed bill in that regard, hence, it need not be examined.

Similarly, Item No.6 raising claim to salaries and allowance of Member from 1.1.2000 to 4.12.2001 that is to say after the petitioner has ceased to be the Member of Company Law Board as a result of decision of the Hon'ble Supreme Court until the date it was decided that no Member is to be appointed on the Company Law Board, is also abandoned, and in our opinion rightly so, when petitioner was not in employment after 20.12.1999, the fact that future employment never came to his lot because he was hoping to get job sometime on decision being taken by Company Law Board, no claim of salary for the period can be made.

The remaining claim we may prefer to decide as follows :-

As regards the petitioner's claim to air fare as travelling allowance from Delhi to Chennai and the transfer allowances for carrying baggages are concerned, the petitioner's case is that in pursuance of his appointment letter he joined as Member (Technical) Company Law Board at Delhi by reporting for duty before the Chairman as per letter dtd. 25.5.1998 and after he has joined the duty at Company Law Board, New Delhi, he was posted at Chennai Branch of Company Law Board. It is in pursuance of that direction he proceeded to Chennai after joining the duty at Delhi while he was in service and he was entitled to travelling allowance and baggages allowance as permissible to a Government servant. The respondents have denied that claim on the ground that since in the posting assigned to the petitioner after joining, a note was appended that he will not claim TA unless he takes oath in his office and discharge his duties from the office, he must be deemed to have joined services only on 29.5.1998 at Chennai. In other words, his appointment was considered to be w.e.f. 29.5.1998 with joining at Chennai.

Our attention has been drawn to Annexure-1 which is appointment letter issued by the Company Law Board requiring the petitioner that if he is willing to accept the offer of appointment, he would convey his acceptance to the Department immediately and in any

case within two weeks' of issue of the letter and report for duty to the Chairman, Company Law Board within stipulated period of two weeks. In pursuance of letter dtd. 22.5.1998, the petitioner reported for duty before the Chairman, Company Law Board on 25.5.1998 forenoon. These facts are not in dispute. It is only after reporting on duty in pursuance of the appointment letter, the petitioner was directed vide letter dtd. 27.5.1998 that the posting orders were issued for joining at Chennai and in pursuance of that petitioner had joined at Chennai on 29.5.1998. Apparently, the note has been appended under posting letter dtd. 7.5.1998 itself that for this appointment order and for the purpose of joining for appointment no TA is chargeable. However, sequence of correspondence goes to show that the petitioner was required to join duty in pursuance of letter dtd. 22.5.1998 before the Chairman, Company Law Board and only thereafter he would be given posting orders. It is not in dispute that if the petitioner joined his service w.e.f. 25.5.1998 he would have been entitled to travelling allowance for travelling from the place of his joining to the place of his posting. Therefore, the narration of the note and assumption of the fact situation cannot deny him the claim to T.A. for which he was entitled under TA rules of a person employed in the Affairs of Union. The Tribunal has without examining this aspect of the matter merely because the petitioner has not been paid salary from 25.5.1998 to 28.5.1998 has

rejected his claim by considering his appointment to be w.e.f. 29.5.1998 only. The legal effect of reporting on duty before the Chairman cannot be washed away by non-payment of salary for the period commencing from that date.

We are therefore of the opinion that the order of the Tribunal in rejecting the claim of the petitioner to deny the travelling allowance and baggages carrying allowance as is admissible to the Member (Technical), Company Law Board for travelling in pursuance of place of posting cannot be denied to him to which he is entitled under the Rules.

In respect of Item No.3, there is no dispute about the fact that this claim relates to the Contributory Provident Fund which was payable to the petitioner on cessation of his appointment as member (Tech.) of Company Law Board. The principal amount of Contributory Provident Fund along with interest upto 31.3.2001, which is date of release of fund by the authority managing the fund to the Company Law Board for transmitting to the petitioner has been paid. It is also not in dispute that this amount has not been delivered to the petitioner on 28.4.2003. In respect of this the petitioner had raised claim of interest from 1.4.2001 until the date to which he was actually paid the amount. The Tribunal has rejected the claim by opining that it is not possible to ascertain who is

responsible for delayed payment. It needs to be stressed that the amount which stands to the credit of incumbents belongs to him and once the amount was released with interest upto the date of release to be transmitted to incumbent, it was incumbent upon the employer to have transmitted it to the employee as early as possible. The fact remains that notwithstanding release of fund in April, 2001 the amount was not made available to the petitioner until 28.4.2003. Why the amount of C.P.F. which was with the respondents was not transmitted to the petitioner until 28.4.2003 has not been explained by the respondents. This burden clearly lay on the employer to prove and having not done so the respondents are liable to pay interest on this delayed payment of C.P.F. also. The Tribunal was not justified in rejecting this claim by not looking to the admitted facts that the payment has been received by the respondents in April,2001 itself though exact date has not been disclosed but this can be counted from the date of granting interest upto 31.3.2001. It is upto that date the amount has remained with the fund and thereafter it has been transmitted to be delivered to the employee. The petitioner is entitled to interest on delayed release of C.P.F., and Tribunal apparently erred in rejecting this claim.

As regards, Item No.4 relating to leave encashment, the petitioner has claimed leave encashment of the leave which were in his balance at the time of

retirement when his service as Member of Company Law Board came to an end for the period of his service as member (Tech.), Company Law Board. The material placed on record which is not in dispute goes to show that the petitioner has been paid at the time of retirement encashment of 255 days leave as per Rules. The maximum entitlement was of encashing leave upto 300 days. The claim was admitted by Company Law Board vide two communications and it was admitted that the petitioner is entitled to 45 days of encashment of leave, which was at his credit as on 20.12.1999, the date he had ceased to be a Member of Company Law Board and the order to that effect was also passed on 4.12.2001 for giving him the payment of such encashment. However, when the amount was not paid and claim was raised before the Tribunal it was sought to be denied on the ground that because of the operation of Rule 27(2)(B) in the case of the petitioner, his leave was liable to be computed differently and he was on that count entitled to only 38 days leave. Rule quoted for altering the leave credit account of the petitioner reads as under as contained in letter dated 14.11.2002 (Annex.-R/17) submitted by the respondents :-

> "When a Government Servant is removed or dismissed from service or dies while in service, credit of earned leave shall be allowed at the rate of 21/2 days per completed calender month up to the end of the Calender month proceeding the calender month in which he is removed or dismissed from service or dies in service."

Apparently, none of these conditions applies in the case of the petitioner. The expression removed or dismissal under the rules has been used to connect removal or dismissal by way of punishment and of course the third contingency of dying while in service which may have its own course does not applying in his case. The petitioner was never dismissed from service but he ceased to be in service in view of the decision of the Hon'ble Supreme Court, finding his appointment to be not in accordance with selected penal but out of reserved list with direction that the Company Law Board should pass a fresh order considering the entire material for giving fresh appointment. Reference to rule 27(2)(b) for the purpose of denying the claim of 45 days leave, for which there was no dispute that the petitioner's claim could not have been restricted with reference to the aforesaid rule, therefore, the petitioner must be held entitled to remaining period of leave standing on his credit from the application of general rules or from the date of 21.12.1999.

Consequently, he is entitled to said relief also.

The Tribunal has given no reason except to say that because Annex.-R/17 says so therefore the claim has been justly denied. Annexure-R/17 only refer s to Rule 27 (b) for denying the leave encashment for

45 days. Obviously the matter has been considered without application of mind to the claim accepting everything stated in the reply on the face value without having considered legal effect and the application of the Rules relied on. Such a result cannot be accepted. On admitted facts the petitioner had to his credit 45 days leave when he ceased to be member of Company Law Board and same could not have been reduced in terms of Rule 27(b). Hence, the Tribunal also erred in rejecting this claim. The petitioner is held entitled to leave encashment for 45 days and to receive balance of leave encashment not paid to him.

We may next consider Item No.7 which relates to adjustment of salary paid to the petitioner from 21.12.1999 to 31.12.1999 though he ceased to be in service from 20.12.1999. Apparently, there being no dispute about the fact that the petitioner has ceased to be in employment since 20.12.1999, no salary could have been paid to him from 21.12.1999 to 31.12.1999. That being very obviously a clerical mistake, this amount being recoverable from the petitioner, is liable to be adjusted against amount payable to him and no claim could be raised in respect thereof. Therefore, the petitioner is justly not held entitled to exclude the adjustment of excess amount paid to him.

The last claim remains to be considered is

about his retirement T.A. bill which has been paid to him but he claims interest for the delayed payment from 1.12.2002 to 31.3.2003. The claim has been denied because this T.A. bill has been claimed only after refusal by the Company Law Board about giving fresh appointment to any one on the post of Member (Technical).

We are of the opinion that this delay in raising the bill of T.A. on the hope of getting reappointment is squarely attributable to the petitioner and he is not entitled for the claim of any interest.

Lastly,the matter relating to interest on the delayed payment of Item No.1 @ 9% p.a. as he raised the bill immediately on his transfer and posting to Chennai until the date of payment and on Item No.3, the delayed payment of CPF for which the petitioner shall be entitled to interest @ 9% from 1.4.2001 to the date of payment. Similarly, on Item No.4 petitioner shall be entitled to interest @ 9% p.a. on encashment of balance leave w.e.f. 1.12.2001 until the amount received by him.

The writ petition, accordingly, stands disposed of. There shall be no order as to costs.

(BHANWAROO KHAN),J. (RAJESH BALIA),J.

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